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APPLICANT: James F. Allsup
SERIAL NO.: 09/629,323
FILED: July 31, 2000
EXAMINER: Alexander Kalinowski
DOCKET NO.: 7554
GROUP ART UNIT: 3626
FOR: Long Term Disability Overpayment Recovery Service With Post Award Service And Savings Program and Financial Assistance

Affidavit of James F. Allsup In Response To Second Requirement For Information Under 37 C.F.R. §1.105

James F. Allsup, being duly sworn, does hereby depose and say as follows:

1. I am the inventor of the Long Term Disability Overpayment Recovery Service With Post Award Service And Savings Program and Financial Assistance described and claimed in application Serial No. 09/629,323 filed July 31, 2000. I own all rights, title and interest in the applications and the invention and have not assigned any rights to another party.

2. I am the founder and President of Allsup, Inc ("Allsup"). Allsup is the exclusive user of the Long Term Disability Overpayment Recovery Service With Post Award Service And Savings Program and Financial Assistance described and claimed in application Serial No. 09/629,323.

3. I have reviewed the posting on the *Findlaw's* Message Board included with the Examiner's Requirement for Information Under 37 C.F.R. §1.105 mailed July 27, 2004. The referenced posting on the message board is

entitled "Long-Term Disability Insurers and Lump-sum payments from SSDI" and was submitted by Brian McCarthy-12-24pm Jun 8, 2004.

4. As an initial matter, I would like to inform the Examiner that I am familiar with Mr. Brian McCarthy. Mr. McCarthy is an attorney of record for a competitor that presently is a defendant in a lawsuit filed by my company, Allsup, Inc. I ask the Examiner to keep this fact in mind when assessing the credibility of Mr. McCarthy's statements in the posting.

5. Mr. McCarthy cites no case law or any other evidence to substantiate his naked assertions that the process of preauthorizing a recovery of an overpayment from a deposit account is illegal or violates the anti-assignment provision of the Social Security Act.

6. It is my opinion based upon my years of providing overpayment recovery services that Mr. McCarthy's statements are unsupportable, erroneous and misleading to the Examiner and to the general public.

7. Prior to embarking on the method of the present invention, I took steps to assure myself that my new method of recovering overpaid long-term disability (LTD) benefits was legal and in compliance with all Social Security Administration laws and rules, as well as all laws and rules applicable to direct deposit accounts and automated clearing house procedures.

8. There are no specific portions of the Social Security Act that address the preauthorized withdrawal of deposited Social Security Disability Insurance benefits (SSDI). However, the preauthorized withdrawal of funds from an account to which SSDI has been deposited is addressed by other SSA rules.

9. Federal law, specifically the Debt Collection Improvement Act of 1996, authorizes direct deposit of SSDI. The law requires that most federal payments, including SSDI, be made by electronic funds transfer after January 2, 1999.

10. In response to the enactment of the Debt Collection Improvement Act, the Social Security Administration (SSA) modified its Program Operations Manual System (POMS) to account for electronic funds transfer. A copy of POMS Section GN 02402.001 Direct Deposit Policy is attached to this affidavit as Exhibit 1.

11. In general, POMS provides that direct deposit payments of SSDI be made to checking or other deposit accounts. In general, direct deposit payments of SSDI can be made to an account so long as the disabled individual has an appropriate ownership interest in the account, so as to have control over the account. Attached to this affidavit as Exhibit 2 is a copy of GN 02402.030 Acceptable Types of Financial Institutions and Accounts.

12. Section 207 of the Social Security Act, attached hereto as Exhibit 3, specifically prohibits the assignment or transfer of the right to future Social Security payments. For example, a request for direct deposit that assigns or transfers the right to future payments to someone other than the beneficiary, e.g. to a credit card company or insurance company, will not be honored, as set out in GN 02402.045 Direct Deposit-Assignment of Benefits, attached hereto as Exhibit 4.

13. However, as set out in Exhibit 2, GN 02402.030, paragraph B.3 Preauthorized Withdrawals, beneficiaries may choose to preauthorize an entity to withdraw funds from their account for a wide variety of purposes. SSA has no jurisdiction over preauthorized withdrawals arranged with the beneficiary's consent, provided the beneficiary has requested direct deposit into an acceptable type of account.

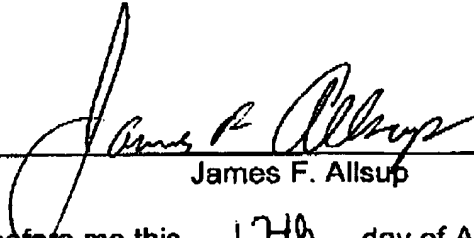
14. The method of the present invention provides for the establishment or use of an acceptable account and the direct deposit of SSDI into the account, so that the beneficiary has legal control of the funds, which is in compliance with the law. The consensual, preauthorized withdrawal of overpaid amounts of LTD benefits from an account to which SSDI has been deposited, is effected after the deposit into the beneficiary's account.

15. My method utilizes a novel preauthorized withdrawal form that informs the disabled individual of: a.) the amount of the preauthorized withdrawal; b.) the date on or after which the amount will be withdrawn; and c.) the right to cancel the authority to withdraw.

16. When developing my overpayment recovery program, I identified and addressed the legal issues discussed above, with the assistance of outside legal counsel.

17. I believe that with this affidavit and the written materials submitted herewith, I have complied with the Examiner's requirement for information as completely as possible. I also believe that I have shown, through documentary

evidence, that my claimed method of recovering overpaid SSDI benefits is not illegal.


James F. Allsup

Sworn and subscribed to before me this 17th day of August, 2004.


Carol J. Papenberg
Notary Public

My Commission expires: Apr. 30, 2007



SSA Policy Site: POMS Section GN 02402.001

[Table of Contents](#) | [Search](#) | [Previous](#) | [Next](#)

Subchapter Preview:

TN 12 (05-00)

GN 02402.001 Direct Deposit Policy

IMPORTANT: EM-00142 and EM-01034 affect the sections in this subchapter. See AO 49905.142 and AO 49906.034.

A. POLICY

The Debt Collection Improvement Act of 1996 requires most Federal payments to be made by electronic funds transfer (EFT), with the exception of tax refunds, beginning January 2, 1999.

Title II and title XVI benefit recipients who indicate that payment by EFT would impose a hardship may request to be exempted from the EFT requirement. The recipient will determine what constitutes a hardship. These self-determinations of hardship will not be verified or documented in the file.

This policy applies to all Title II and Title XVI recipients regardless of their date of eligibility or whether they have bank accounts. If an individual inquires about a waiver from the direct deposit requirement or otherwise indicates that payment by direct deposit would impose a hardship, benefits will be paid by check.

Field Offices (FOs) maintain lists of financial institutions (FIs) in their area that offer low cost banking services. To maintain good public relations, FOs may prefer to maintain a list of all FIs in the area, the accounts they provide, and the approximate cost of the accounts. FOs will also have information about FIs offering Electronic Transfer Accounts (ETA). The lists should be updated at least every two years to ensure their usefulness.

B. REFERENCES

Electronic Transfer Accounts (ETA), [GN 02402.067](#)
Policy - Direct Deposit Outside the U.S., [GN 02402.201](#)

GN 02402.001 - Direct Deposit Policy - 02/26/2001

Serial No. 09/629,323
Exhibit 1 filed 8-18-04

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8/10/2004

SSA Policy Site: POMS Section GN 02402.030

[Table of Contents](#) | [Search](#) | [Previous](#) | [Next](#)

TN 11 (09-98)

GN 02402.030 Acceptable Types of Financial Institutions and Accounts

A. POLICY - FINANCIAL INSTITUTIONS

1. Acceptable Types Of FIs

Direct deposit payments can go to any of the following types of institutions:

- banks,
- savings and loan associations,
- credit unions, or
- thrift institutions.

These institutions meet the criteria of the Treasury Department and have RTNs assigned to them. Never recommend any individual FI or type of institution over another.

2. Unacceptable Types of Financial Service Providers

Direct deposit payments cannot go **directly** to any of the following types of institutions:

- credit card companies,
- finance companies,
- insurance companies, or
- other non-traditional financial service companies.

Although they may be associated with an FI, they do not meet the criteria of Department of the Treasury (DT) regulations. However, see [GN 02402.030B.1.d.](#) for investment accounts. See [GN 02402.050A.](#) for information about paying benefits through master/sub accounts.

B. POLICY - ACCOUNTS

1. Acceptable Types Of Accounts

Serial No. 09/629,323
Exhibit 2 filed 8-18-04

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Direct deposit payments can go to any of the following types of accounts in acceptable institutions:

- a. Checking accounts.
- b. Savings accounts.
- c. Other transaction accounts (e.g., money market accounts and share draft accounts).
- d. Investment accounts. Direct deposit to an investment account does not constitute an assignment of benefits. The beneficiary must be the owner or co-owner of an individual account and must have the right to terminate the direct deposit if desired. Direct deposit cannot be allowed if it is a condition of the services provided. The FO must determine if direct deposit is a condition of the services. (See GN 02402.030C for more information about investment accounts.)
- e. Master/sub accounts. See GN 02402.050A for a description of master/ sub accounts and GN 02402.050B for requirements that must be met in order to approve direct deposit of benefits to a master account. See GN 02402.030B.4 for an explanation of direct deposit to non-bank financial service providers by using accounts at traditional FIs.
- f. Debit-only accounts.

2. Unacceptable Types of Accounts

Direct deposit payments cannot go **directly** to any of the following types of accounts:

- commercial (i.e., business accounts),
- credit card accounts,
- loan accounts,
- mortgage accounts, or
- other accounts from which funds cannot be withdrawn.

3. Preauthorized Withdrawals

Beneficiaries may choose to preauthorize an FI or other entity to withdraw funds from their account or sub account for a wide variety of purposes (e.g., utility bills, mortgage payments, loan repayments, investments, nursing home fees, etc.). SSA has no jurisdiction over preauthorized withdrawals arranged with the beneficiary's consent, provided the beneficiary has requested direct deposit into an acceptable type of account (see GN 02402.030A.1).

4. Direct Deposit Through Non-bank Financial Service Providers

Since direct deposit is now the presumed method of payment and will be required for all Government payments in the final phase of the new direct deposit requirements, many non-bank financial service providers (FSP), such as loan companies and check cashing facilities, now offer direct deposit for their customers. The direct deposit may be arranged in one of the following ways:

- a. **Master/sub accounts.** The requirements for these arrangements are described in GN 02402.050. Benefits are sent by direct deposit to a master account at an FI that meets the requirements of GN 02402.030A.1. In this arrangement, both the routing number and the depositor account number may be the same for all participants. Example 2 in GN 02402.050A describes a master /sub account

<http://policy.ssa.gov/poms.nsf/lnx/0202402030!opendocument>

Serial No. 09/629,323
Exhibit 2 filed 8-18-04

8/10/2004

arrangement with a check cashing service, one type of non-bank FSP.

- b. **Separate accounts at an FI.** The FSP sets up a separate account for each customer at an FI. The customer preauthorizes withdrawals to the FSP. The customer then receives the funds in cash or check from the FSP. If there is an outstanding loan, the customer may authorize the FSP to deduct the payments before giving him/her the funds.

This type of arrangement is acceptable and does not constitute assignment of benefits if all of the following requirements are met:

- The benefits must be deposited in an account owned by the beneficiary at an FI that meets the requirements in GN 02402.030 A.1.
- Enrollment must be voluntary on the part of the beneficiary.
- The beneficiary must be able to terminate the direct deposit arrangement upon request.
- Funds paid to a representative payee through a non-bank FSP must be used for the beneficiary's current needs.

EXAMPLE: A loan company called the Dollar Branch in LA sets up a block of accounts for customers at Good Value Bank in OH. When title II and title XVI payments are received in the accounts, Good Value Bank transfers the funds to a Dollar Branch account and notifies Dollar Branch of each transaction. The customers go to their local Dollar Branch each month to receive their payments in cash or check, after any monthly loan payments are deducted.

NOTE: SSA does not regulate the amounts charged by FSPs. The customer must decide whether the charges are suitable.

C. DESCRIPTION - INVESTMENT ACCOUNTS

Direct deposit to an investment account does not constitute an assignment of benefits. The beneficiary must be the owner or co-owner of an individual account and must have the right to terminate the direct deposit if desired. Direct deposit cannot be allowed if it is a condition of the services provided. The FO must determine if direct deposit is a condition of the services.

Since investment firms do not meet the DI criteria to receive direct deposit transactions, they must make special arrangements with FIs in order to receive the funds. The beneficiary who wants benefits deposited to his/her account at an investment firm contacts the investment firm. The investment firm provides the RTN and DAN of the FI account to the beneficiary.

When the beneficiary provides the RTN and DAN to the FO/TSC and requests direct deposit, the FO/TSC makes sure that the title of the account at the investment firm meets SSA's requirements in GN 02402.050 - GN 02402.060.

When direct deposits are made into an investment fund account, the FI acts as a conduit for the funds; it receives the benefits into the account by direct deposit, deposits the funds in the investment firm's account, and notifies the investment firm of the deposit. The investment firm then transfers the funds into the beneficiary's investment account.

EXAMPLE: Mr. Williams requests direct deposit to his investment account at Linden Investment Services. Linden maintains an account at Steadfast National Bank for the purpose of receiving and transferring direct deposit payments for its customers. Mr. Williams provides the RTN and DAN for the account at Steadfast to the TSC. The TSC makes sure that Mr. Williams' name is on the investment account and approves the direct deposit. When Mr. Williams' benefits are received in Linden's account at the FI, Linden then transfers the benefits into his investment account.

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Page 16/18

: GN 02402.030 - Acceptable Types of Financial Institutions and Accounts - 09/10/2003

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GN 02402.030 - Acceptable Types of Financial Institutions and Accounts - 09/10/2003

<http://policy.ssa.gov/poms.nsf/lnx/0202402030!opendocument>

Serial No. 09/629,323
Exhibit 2 filed 8-18-04

8/10/2004

Compilation of the Social Security Laws

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ASSIGNMENT^[115]



SEC. 207. [42 U.S.C. 407] (a) The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after the date of the enactment of this section^[116], may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this title, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person's representative payee.

[115] See Vol. II, P.L. 83-59, §§86, 861, and 871, with respect to income subject to taxes.

[116] This section was enacted August 10, 1939, [P.L. 76-379, §207].

This subsection was enacted April 20, 1983, [P.L. 98-21, §335(a)(2)].

Serial No. 09/629,323
Exhibit 3 filed 8-18-04

http://www.ssa.gov/OP_Home/ssact/title02/0207.htm

8/3/2004

SSA Policy Site: POMS Section GN 02402.045

[Table of Contents](#) | [Search](#) | [Previous](#) | [Next](#)

TN 10 (06-97)

GN 02402.045 Direct Deposit — Assignment of Benefits

A. POLICY - GENERAL

Section 207 of the Social Security Act specifically prohibits the assignment or transfer of the right to future Social Security payments.

B. POLICY - REQUEST FOR DIRECT DEPOSIT

A request for direct deposit which assigns or transfers the right to future payments to someone other than the beneficiary, e.g., to a credit card company or an insurance company, will not be honored. Such a request constitutes an assignment of benefits.

(See GN 02410.001 ff for a full discussion of assignment of benefits.)

C. PROCEDURE

When a request for direct deposit is made which raises a question about possible assignment of benefits, take the following actions:

- Get an SF-1199A, and
- Verify that there is no assignment, and
- Verify that the account title meets the requirements in GN 02402.050.
- If there is no assignment, then approve the request.

GN 02402.045 - Direct Deposit Assignment of Benefits - 06/17/97

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Exhibit 4 filed 8-18-04

<http://policy.ssa.gov/poms.nsf/lnx/0202402045!opendocument>

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